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Attorneys for Cunningham Lindsey, U.S. Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

TAMMY FRIEDLUND,

Plaintiff,

vs.

MOUNTAIN WEST FARM BUREAU
MUTUAL INSURANCE CO., a foreign
corp., CUNNINGHAM LINDSEY U.S.,
INC., a foreign corp., ABC Corps., ABC
LLCs, and JOHN DOES 1-10,

Defendants.

Cause No.:

**DEFENDANT CUNNINGHAM
LINDSEY U.S., INC.'S NOTICE
OF REMOVAL**

Defendant Cunningham Lindsey, U.S. Inc. ("Cunningham"), by and through its counsel of record, hereby gives notice to all interested parties that the above-captioned action is removed pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 from the Eighteenth Judicial District of the State of Montana, County of Gallatin, Civil

Cause No. DV-16-740A, to the United States District Court for the District of Montana, Butte Division based on diversity of citizenship.

1. This action has been removed to federal court based upon the following federal jurisdictional basis: diversity of citizenship under 28 U.S.C. § 1332.

2. The other defendant, MWFB has been contacted and consents to removal of this case to federal court but anticipates that the claim against it will be severed pursuant to its future participation in arbitration with Friedlund.

3. On October 4, 2016, plaintiff Tammy Friedlund (“Friedlund”) filed an action against Cunningham and defendant Mountain West Farm Bureau Mutual Insurance Co. (“MWFB”) in the Eighteenth Judicial District of the State of Montana, County of Gallatin, Civil Action No. DV-16-740A (“State Action”). A true and correct copy of the Complaint and Jury Demand and Summons are attached as **Exhibit 1**.

4. Friedlund served Cunningham through its registered agent on September 13, 2019. Notice of Removal was timely filed with the Court pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days after receipt of the initial pleading.

5. Friedlund’s Complaint alleges that she was wrongfully discharged from Cunningham and that Cunningham blacklisted her. *Compl.* ¶¶ 10-11, 16-30.

6. Pursuant to 28 U.S.C. §1332(a)(1), the United States District Court for the District of Montana has jurisdiction for the removal of this state action as the lawsuit is comprised entirely of a civil nature and is an action between citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

7. There is complete diversity between Friedlund, Cunningham and MWFB under 28 U.S.C. § 1332(a)(1). Friedlund admits that she is a resident of Gallatin County, Montana. *Compl.* ¶ 1. Friedlund is, therefore, a citizen of Montana for diversity purposes. At the time the Complaint was filed, Cunningham was a Texas corporation with its principal place of business in Lewisville, Texas. The Ninth Circuit Court of Appeals has held that diversity of citizenship is assessed “as of the time the complaint is filed and removal is effected.” *Strotek Corp. v. Air Transp. Ass'n. of Am.*, 300 F.3d 1129, 1132 (9th Cir. 2002). Cunningham is, therefore, a citizen of Texas for diversity purposes.¹ MWFB is, and was at the time the Complaint was filed, a Wyoming corporation with its principal place of business in Laramie, Wyoming. MWFB is, therefore, a citizen of Wyoming for diversity purposes.

¹ Should citizenship be determined at the time of removal, complete diversity still exists because Cunningham is now a citizen of Illinois and Tennessee due to its merger with Sedgwick Claims Management Services, Inc. on June 30, 2019. Sedgwick Claims Management Services, Inc. is an Illinois corporation with its principal place of business in Tennessee.

8. Despite seeking an unspecified amount in damages, the allegations in Friedlund's Complaint demonstrate that the amount in controversy exceeds the requisite \$75,000. Friedlund seeks damages related to Montana's Wrongful Discharge from Employment Act, which includes up to four years lost wages, including fringe benefits, minus mitigation of damages. Mont. Code Ann. § 39-2-905(1). Friedlund's salary was \$58,000 per year with Cunningham.

9. Additionally, Friedlund seeks punitive damages as relates to her blacklisting claim. *Compl.* ¶ 30. The Ninth Circuit Court of Appeals has held that punitive damages are properly included in a calculation of the amount in controversy for purposes of removal on diversity of citizenship grounds. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1091 (9th Cir. 2003).

10. Here, the amount of the alleged damages shows that the amount in controversy exceeds \$75,000.00. "[T]he amount-in-controversy allegation of a defendant seeking federal-court adjudication should be accepted when not contested by the plaintiff or questioned by the court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 550, 190 L. Ed. 2d 495 (2014).

11. Pursuant to 28 U.S.C. § 1446(d), Cunningham will promptly serve written notice of the filing of this Notice of Removal upon all other parties and will promptly file a copy of this Notice of Removal with the Clerk of Court for the Montana Eighteenth Judicial District Court, Gallatin County.

12. Pursuant to 28 U.S.C. § 1446(a), Cunningham files together with this Notice of Removal a copy of all process, pleadings, and orders served in this case, attached hereto as **Exhibit 2**. These attachments constitute all documents known by Cunningham to have been served in the case.

13. No defendants have appeared in the State Action.

14. No previous application has been made for the relief requested herein.

15. By filing this Notice of Removal, Cunningham does not waive any defenses that may be available to contest Friedlund's allegations made in the Complaint.

WHEREFORE, Cunningham respectfully requests that this case continue to proceed before this Court as an action properly removed.

Dated this 11th day of October 2019.

/s/ Daniela E. Pavuk

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P. O. Box 2529

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*Attorneys for Defendant Cunningham
Lindsey U.S., Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 11th day of October, 2019:

| | |
|---|---------------------------------|
| <input checked="" type="checkbox"/> U.S. Mail | Thomas J. Karem, Esq. |
| <input type="checkbox"/> FedEx | Karem Law Firm, P.C. |
| <input type="checkbox"/> Hand-Delivery | 1902 W. Dickerson St., Ste. 103 |
| <input type="checkbox"/> Facsimile | P.O. Box 682 |
| <input type="checkbox"/> Email | Bozeman, MT 59771-0682 |
| <input checked="" type="checkbox"/> ECF | |

/s/ Daniela E. Pavuk